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Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[25 February 1994]

PROPOSED CONFLICT RESOLUTION PATHWAYS FOR IRAQ 1/

1. Together with the former Yugoslavia (E/CN.4/Sub.2/1993/NGO/29) and the Baltic States (E/CN.4/Sub.2/1993/NGO/27), Iraq presents the most challenging - and potentially the most rewarding - case of valid but forgotten or disregarded international minority protection guarantees (E/CN.4/Sub.2/1992/NGO/27). And given the unbearable humanitarian tragedy of the peoples involved, the Governments may find it useful to take a fresh look at these instruments and possible pathways for their prompt and effective application.

2. In early 1992, following the Gulf war, the Good Offices Group of European Lawmakers proposed an original plan of its own. It communicated its ideas, archive material and analysis primarily to the decision-makers of the parties to the conflict, thus contributing to the legal and political underpinnings for the increasingly accepted unprejudicial interim solution covering the "illegally occupied", contested or destabilized territories of the former Kingdom of Iraq.

3. These territories, provisionally, would be administered by the United Nations or under its supervision, based on corresponding General Assembly decisions and formulas inspired by the United Nations Trusteeship System and the Free Territory of Trieste Agreement (UNTS 49,3). And they would reflect the international minority protection guarantees contained in the still valid Declaration of the Kingdom of Iraq of 30 May 1932 (reproduced in: E/CN.4/Sub.2/1992/NGO/27; see also: E/CN.4/367). Other elements of this lawmaker plan provide for the recognition, by the General Assembly, of Trustees, Community Elders or Special Minority Representatives who, chosen for their competence by the peoples covered by these international guarantees, are to participate in all related negotiations and to advise all involved United Nations bodies.

4. On 14 February 1994, the Iraqi Delegate to the Commission on Human Rights sought to demonstrate how well successive Iraqi Governments, particularly since 1954, have provided for the protection and non-discrimination of their Assyrian, Kurdish and Turkoman minorities in particular with regard to their cultural heritage, their racial, religious and linguistic specificity and their human rights.

5. Notwithstanding the compelling contrary findings notably of the Commission's Special Rapporteur on Iraq (A/46/647; A/47/367 Add.1; E/CN.4/1992/31; S/24386; E/CN.4/1993/45; E/CN.4/1994/58), the Iraqi Delegate based himself essentially on corresponding constitutional provisions and numerous Iraqi laws. He didn't question the continuous validity, in international law, of the pre-eminent Iraqi Declaration of 30 May 1932.

6. In the hands of far-sighted and imaginative politicians with an agenda for generations rather than for the next United Nations decision on Iraq, this constitutive document may help to address effectively and promptly the human rights tragedy of the Iraqi people as a whole, not excluding the minorities living in Northern Iraq. For it contains international minority protection

guarantees and a mechanism to enforce them by providing - in combination with General Assembly resolution 24 (I) of 12 February 1946 - that a suitable United Nations body, in case of "any infraction, or any danger of infraction of any of these obligations" may "take such measures and give such directions as it may deem proper and effective in the circumstances" (arts. 10 and 16).

7. Also, the January 1992 statement of the Iraqi Vice Prime Minister Tariq Aziz - "Iraq would be the first to recognize Kurdish independence" (E/CN.4/1992/31, para. 108) - was subsequently confirmed to reflect official Iraqi policy. 2/ Conceivably then, the Iraqi tragedy may be brought to an early end without jeopardizing Iraq's legitimate core interests - and with due regard to the legitimate concerns of Iraq's neighbours. This may be achieved with the help of the United Nations by way of a creative use of this widely underestimated 1932 Declaration.

8. Giving tangible and exemplary meaning to the concepts of pacta sunt servanda and international minority protection guarantees, the United Nations General Assembly, based on its resolution 24 (I) of 1946, may find it indicated to assign the related powers and functions, e.g., to the Trusteeship Council. It may declare that part of the Mosul Vilayet which is not under Iraqi Government control to be off limits with regard to the economic sanctions imposed on Iraq. Also, the General Assembly could request the International Court of Justice urgently to render an Advisory Opinion (Art. 96 of the Charter of the United Nations) on related questions, e.g. on the continued validity, under jus cogens and in international law, of sanctions the maintenance of which inadvertently produce effects in contradiction to international conventions.

9. Such measures could promptly unlock the apparent present gridlock and lead to politically unprejudicial, humanitarianly acceptable and economically self-sustaining principled interim solutions. Eventually, these may go beyond the Mosul Vilayet and cover the Baghdad and/or the Basra vilayets.

10. As suggested for the cases of former Yugoslavia and others, the measures thus envisaged could take the form of temporary United Nations Protectorates, Trusteeships or similar arrangements. They could significantly - and in a mutually stabilizing manner - alter the political equation in the respective region. They could precede and facilitate the lifting of the economic sanctions on all of Iraq.

11. The proposed measures could bring to the populations concerned the overdue relief, without prejudice to their ultimate political fate. In the case of the Mosul Vilayet's Yezidi and the Muslim, Christian and Jewish Arabs, Armenians, Assyrians, Kurds, Turkomans and others, this would entail in time the eventual, freely-decided re-attachment of their ancestors' territory to either Iraq or Turkey, its attachment to Syria or Iran, or its eventual independence.

12. Also, in the cases of the Christian, Shiite and Sunnite inhabitants of the Baghdad and the Basra vilayets, further developments are conceivable which seem worthy of these peoples' great cultural past. This might include interim solutions for Palestinians of all faiths who, in the event, may need complementary solutions and fallback positions. However, that road may be opened only by a deliberate - and sanctions-relevant - dissolution of existing structures into a federated state involving notably the Kingdom of Jordan.

Notes

1/ This written statement has been prepared in cooperation with the Good Offices Group of European Lawmakers and its research branch, CORUM (POB 2580, 1211, Geneva 2). Its editor, J.A. Keller, is alone responsible for eventual errors and omissions. He wishes to express his gratitude for the assistance and numerous services provided by the United Nations Office in Geneva, by the director of the United Nations Geneva Library and by the League of Nations archivist and their staff.

2/ Private communication to the Secretary of the Good Offices Group of European Lawmakers (POB 2580, 1211, Geneva 2) by the then-Iraqi Chargé d'affaires in Geneva. This state of affairs may in particular reflect the spreading awareness of the legal difficulties awaiting any Iraqi Government wishing to export oil from the Mosul Vilayet (Northern Iraq which, in 1925, was only conditionally attached to the Kingdom of Iraq). Such risks might be avoided through negotiations. In the absence of corresponding agreements with the original Arab, Armenian, Assyrian, Kurdish and Turkoman landowners concerned, the latter might find effective judicial protection of their property rights through coercive enforcement measures wherever Iraqi oil will eventually be exported to - simply by invoking said Iraqi Declaration of 1932 (arts. 14 and 16).

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Andean Commission of Jurists, Commission for the Defence of Human Rights in Central America, France-Libertés: Fondation Danielle Mitterrand, International Commission of Jurists, International Federation of Human Rights, International Human Rights Law Group, International Indian Treaty Council, International League for the Rights and Liberation of Peoples, Latin American Federation of Associations of Relatives of Disappeared Detainees, Lawyers' Committee for Human Rights, Pax Christi, Pax Romana and Service, Peace and Justice in Latin America, non-governmental organizations in consultative status (category II) and Centre Europe-Tiers Monde, International Federation for Christian Action to Abolish Torture, World Organization Against Torture and World Christian Life Community, non-governmental organizations on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 February 1994]

NGOs INVITE THE COMMISSION ON HUMAN RIGHTS TO APPOINT
A SPECIAL RAPPORTEUR FOR COLOMBIA

1. The human rights crisis in Colombia is extremely serious, as has been pointed out year after year by the various thematic rapporteurs, working groups and experts that have submitted reports to the United Nations Commission on Human Rights.

2. This is perhaps the reason for the statement, in the latest report on extrajudicial, summary or arbitrary executions, that "the Special Rapporteur remains concerned: as described above, he continues to receive a large number of allegations concerning violations of the right to life. It is particularly disturbing to note that similar allegations have now come before the Special Rapporteur for many years". For that reason, the Special Rapporteur decided to urge the Government of Colombia "to adopt effective measures to prevent further loss of life, particularly in the context of counter-insurgency activities or 'death squad' operations against those regarded as socially undesirable. The Special Rapporteur also appeals to the authorities to investigate human rights abuses and bring their perpetrators to justice" (E/CN.4/1994/7, para. 238).

3. The Working Group on Enforced or Involuntary Disappearances has also been concerned at this lack of investigation of human rights violations. In its 1994 report it states: "Such impunity seems to be made easier by the following circumstances. Both the previous Constitution and the 1991 Constitution establish a special military jurisdiction for members of the forces of law and order who ... violate the law or the Constitution ... . It was reported that this jurisdiction is in practice ineffectual for two basic reasons: (a) the immediate superior of the person carrying out the order ... is both the judge and the plaintiff; (b) the military courts do not allow relatives to bring criminal indemnification proceedings in the trial ... . State officials ... who have been convicted of human rights violations are not normally dismissed but have been transferred and, in some instances, promoted" (E/CN.4/1994/26, paras. 168 and 169).

4. The United Nations Centre for Human Rights mission to evaluate the advisory services received between 1988 and 1992 by the Government of Colombia stated in its report that "the mission concludes that the Office [of the Presidential Adviser] has done praiseworthy and important work for the promotion of human rights in such areas as advisory services, education, dissemination, training and information regarding cases of serious human rights violations (...). Although case-handling is of special importance as a means of information, activities for the protection of human rights, in the strict sense, were of lesser magnitude" (E/CN.4/1993/61/Add.3, paras. 116 and 118). The mission therefore recommended that priority be given to such protection activities as compliance with the recommendations made to the Government of Colombia by various international human rights bodies, dismissal from the service of officials accused of serious violations of human rights, no restriction of human rights or procedural guarantees during states of emergency, protection for defenders of human rights, ending the practice of having human rights violations dealt with by military courts, democratic strengthening of the administration of justice and compliance with international humanitarian law (ibid., para. 125).

5. The Special Rapporteur on the question of torture also expressed this year his concern at the violation of human rights in Colombia, which he

described as endemic: "The Special Rapporteur looks forward to learning from the Government what measures it proposes to take to bring under control this problem [of torture] which seems to be endemic, especially in zones of [armed] conflict" (E/CN.4/1994/31, para. 188).

6. There are still more than 10 politically-motivated killings in Colombia every day and the figure has stayed at this very high average level since 1988. There is virtually absolute impunity for violations of human rights. The authorities have not implemented the various recommendations made to the Government of Colombia by the agencies and institutions of the international community, calling on the Government to cooperate in resolving this acute and persistent human rights crisis.

7. Accordingly, and having regard to the voluminous and disturbing documentation on this matter, the undersigned non-governmental organizations respectfully request the distinguished members of the United Nations Commission on Human Rights, at its fiftieth session, to pay due attention to the situation in Colombia and to appoint, to this end, a special rapporteur. The Commission will thus be better able to ensure compliance with the international recommendations already made. It will also obtain a more comprehensive picture of state responsibility in this matter and of the magnitude of the obstacle to the observance of human rights which the action of certain violent persons represent. The Commission will also be able more clearly to determine the aspects to be emphasized and the contribution it can make to enable Colombian society to overcome as soon as possible the difficult situation in which it now finds itself.

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QUESTION OF THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Written statement submitted by the Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[10 February 1994]

RELATIONSHIP BETWEEN THE RIGHT TO DEVELOPMENT, OTHER HUMAN RIGHTS AND THE ENVIRONMENT

1. Human Rights Advocates, in conjunction with the Natural Heritage Institute, 1/ submits the following written statement to the Commission on Human Rights.

2. The Commission on Human Rights in its resolution 1993/22 established a Working Group to identify obstacles to the implementation and realization of the Declaration on the Right to Development. In its report (E/CN.4/1994/21) the Working Group found that a sense of common global responsibility had emerged which not only comprised a growing consensus on human development, but also an increased attention for respect of human rights, as well as for the environment.

3. Inappropriate and destructive development techniques were identified as serious obstacles to the implementation of the Right to Development by the Global Consultation on the Right to Development as a Human Right, held from 8 to 12 January 1990. They concluded that disregard for human rights and

in particular the right to development could lead to conflict and instability. This in turn might undermine the economic conditions needed for development through phenomena such as involuntary migration and environmental destruction. (E/CN.4/1990/9/Rev.1, paras. 161-169)

4. The report issued by the Secretary-General to the Commission at its forty-ninth session focused primarily on obstacles to development on the international macro-economic level. It did not address the obstacle that environmentally unsound development can pose to the realization of the right to development and other basic human rights. (E/CN.4/1993/16)

5. The relationship of human rights to the environment has been analysed for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities by the Special Rapporteur, Mrs. Fatma Ksentini. (E/CN.4/Sub.2/1993/7, E/CN.4/Sub.2/1992/Add.1)

6. The effective exercise and enjoyment of basic human rights for much of the world's population is prohibited by environmental problems. Water and air pollution, accumulations of solid and hazardous wastes, soil degradation and deforestation prevent many people from securing the minimum requirements for health and survival. Whether or not a basic human "right to the environment" exists, a safe and ecologically balanced environment is necessary for the realization of all basic human rights.

7. The goal of development is the development of the entire human being and a continued increase in the wellbeing of all human beings. Only if development is carried out in a way that is protective of the environment can it be truly sustainable and ensure other basic human rights. Economic development and sound environmental management are complementary aspects of the same agenda. Without adequate environmental protection, development will be undermined and without development environmental protection may fail.

8. Although the United Nations and many governments and regional bodies have recognized that the goal of human development is the realization of all human rights, in many regions of the world, the environment is degraded by developers often with the tacit approval of the Government and in violation of other basic human rights.

9. Poorly planned development projects in vulnerable areas provide an increasing stress on the environment and on the sustainability of human development. Projects intended to improve the standard of living often irreparably damage pre-existing sustainable methods of sustenance.

10. Indigenous peoples are often those most harmed by the development process. Oil exploration, mining, deforestation and dam construction degrade their land and place their cultural and physical survival in peril. 2/

11. The exploitation and degradation of natural resources has created the largest and fastest growing group of displaced persons in the world. Environmental refugees are people fleeing natural disasters, such as radical land transformations, the construction of dams and irrigation works and/or toxic contamination. Over 135 million people may be at risk of being displaced by severe desertification alone. 3/

12. Involuntary resettlement projects according to the World Bank's guidelines are intended to provide new and better opportunities for the peoples moved. However, these projects are usually poorly planned, managed and financed. They are imposed on people with little consultation and raise serious human rights as well as environmental concerns. Many of the displaced have been forced to leave behind their cultural heritage and livelihood only to become migrant workers. These displaced persons are often relocated to shanty towns or to fragile agricultural frontiers, where they contribute to deforestation and desertification. Disease, hunger, loss of livelihood and loss of self-reliance are regular results. 4/

13. Projects to construct large scale dams force mass involuntary resettlements of local peoples and are notorious for producing human rights violations and environmental degradation. Ecological changes downstream often cause a loss in water resources and arable land to farmers dependent on the historic flow. Major land use changes may be introduced behind the dam resulting in changes in land values, land grabbing, displacement and more environmental degradation. For example, hydro power development in Ghana's Volta River basin has caused 70,000 cases of river blindness and 80,000 people to relocate, many of whom had to relocate again after the initial resettlement's failure. 5/ Similarly, the Narmada River Basin Project in India will force the eviction of thousands of peoples who hold their ancestral land communally under forms of tenure which can never be converted into property rights recognized and compensated by State law. 6/

14. Large-scale commercial farming projects also lead to widespread degradation. A recent World Bank assessment of cotton production projects in West Africa linked them with deforestation, erosion and declining soil fertility. Thousands of small scale, marginal rural households were pressed into sacrificing subsistence plots and labour for cash crop production. 7/ Other large-scale farming projects have replaced sustainable local agriculture with unsustainable export crops. As only one dramatic example, the Aral Sea in Central Asia has been drained to two-thirds of its natural size in the last 30 years, as a result of diversions from its tributaries for irrigation of commercial cropland. 8/

15. Such destructive projects are often aimed at increasing the rate of export of natural resources. The ability of States to control their rate of resource exports is constrained, among other reasons, by current rules of international trade. Such rules may also limit the ability of States to effectively implement national policies for sustainable development.

Recommendations to the Commission

16. Call upon the Working Group to further investigate how the right to development can be implemented to guarantee respect for the environment and all other human rights.

17. Call upon the Working Group to further investigate the link between the right to development, the activities of international financial and trade institutions and respect for the environment and human rights, as well as the means for assuring that the policies of these institutions are integrated with those of human rights and other United Nations agencies concerned with the

right to development, and to report back to the Commission at its next session on the results of its investigation.

18. Call upon Governments to develop mechanisms that will guarantee respect for the environment and human rights in implementing national development policies.

19. Call upon international financial institutions to ensure through binding requirements that recipients of development project funds will guarantee respect for the environment and human rights in creating and in implementing development policies and projects.

20. Call for the International Monetary Fund and the World Bank to Review and implement their original mandates as recommended by the Secretary-General 9/ and for new international economic institutions, such as the World Trade Organization, to incorporate criteria supporting the right to development, environmental protection and human rights into its mandate.

21. Coordinate efforts with intergovernmental agencies and the bodies expert in these issues including the United Nations Environment Programme, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the Committees on Economic Social and Cultural Rights and the Commission on Sustainable Development.

Notes

1/ Human Rights Advocates (HRA) and the Natural Heritage Institute (NHI) are non-governmental organizations working in the areas of human rights education and advocacy and international conservation. This written statement was developed by Heidi Poppe and Michelle Schwartz for NHI and HRA. For more information, contact the Natural Heritage Institute, 114 Sansome Street Suite 1200, San Francisco, CA, 94104, United States of America.

2/ Michelle L. Schwartz, "International Legal Protection for Victims of Environmental Abuse", The Yale Journal of International Law, Vol. 18:355 (1993).

3/ See footnote 2.

4/ James C.N. Paul, "The Human Right to Development: Its Meaning and Importance". The John Marshall Law Review, Vol. 25:235 (1992).

5/ See the intervention of HRA/NHI before the Sub-Commission on Prevention of Discrimination and Protection of Minorities forty-fourth session (E/CN.4/Sub.2/1992/NGO/10).

6/ See footnote 5.

7/ See footnote 4.

8/ World Development Report: Development and Environment, p. 38 (World Bank, 1992). See also note 6.

9/ The Secretary-General proposed that international financial institutions review and implement their original mandates. The International Monetary Fund should resolve payment imbalances to share the burden of adjustment between surplus and deficit countries. The World Bank should take up seriously its task of re-cycling global surpluses of the rich nations, so that poorer countries are not forced to borrow on the private financial market. He also suggested that the Commission should request the World Bank to gradually incorporate human rights criteria in its work at all stages.

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